DOROTHY L. DAVIS

IBLA 85-57 Decided September 10, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer for acquired lands, NM-A 47231-OK.

Affirmed.

1. Oil and Gas Leases: Applications: Description

The purpose of 43 CFR 3103.2-3 (1980) was to require an oil and gas lease offer or to provide a description in the offer which is sufficient on its face to delimit the lands in the offer. Where the land described is surveyed, the addition of qualifying phrases to describe subdivisions does not make the description improper. However, where excluded lands are not specifically identified in the offer, the offer will be construed to encompass all the land described.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

APPEARANCES: Kelly S. Thomas, Esq., Midland, Texas, for Dorothy L. Davis; Cecelia A. Duncan, Esq., Office of the Solicitor, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Dorothy L. Davis has appealed from a September 14, 1984, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting her noncompetitive oil and gas lease offer for acquired lands, NM-A 47231-OK. On August 28, 1981, Davis filed a lease offer for acquired lands situated in T. 14 N., R. 21 E., Indian Meridian, Cherokee County, Oklahoma, which she identified as: "Section 2: All; Section 3: All; Sections 7-18: All[;] Described on the Corps of Engineers Department of the Army's Real Estate map of Camp Gruber Military Reservation, sheet 3 of 4." Davis remitted $ 7,690 to cover the $ 10 filing fee and $ 1 per acre advance rental for 7,680 acres. BLM concluded the offer described 8,960 acres rather than 7,680 acres and rejected the offer pursuant to 43 CFR 3103.21 because a deficiency of more than 10 percent existed in the advance rental payment.

In her statement of reasons, Davis argues Milan S. Papulak, 30 IBLA 77 (1977), supports the validity of her offer because it establishes that her offer was limited to only those lands available for leasing. She claims it is evident from her offer that two sections were unavailable for leasing and contends the other 12 sections, constituting 7,680 acres, were properly described and accompanied by a sufficient rental payment. Thus she argues:

> However, the Appellant would emphasize that in the lease offer, she added the qualifier "all" after listing the specific section numbers. The use of the word "all" was intended and has been interpreted to limit Appellant's offer to only those sections of land available for federal leasing. See Milan S. Papulak, 30 IBLA 77 (April 18, 1977). Of the 14 sections listed, only 12 sections or 7680 acres were available for federal leasing. Appellant has been informed and believes that the United States does not have the right to lease the minerals of sections 12 and 13. This fact is clearly evident from examination of the map referred to on Appellant's offer to lease. Appellant contends that by virtue of including the reference to the map in the above quoted land description, that she intended to describe and did describe no more than 12 sections of land available for federal leasing. These sections constituted 7680 acres, as was correctly stated on the face of the lease offer. (Statement of Reasons at 2.)

Davis also argues the term "total acreage" as used in 43 CFR 3103.2-1, is not defined by the regulations and BLM's decision represents a "hypertechnical" interpretation which is arbitrary and capricious.

[1] The controlling regulation in effect when appellant filed her offer, 43 CFR 3103.2-3 (1980), stated in part: "If the lands have been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range." Cf., the current revision of this regulation, 43 CFR 3111.2-2(a). The purpose of Departmental regulation of descriptions in offers is to require the offeror to provide a description which is at least sufficient on its face to delimit the lands in the offer. Bruce Anderson, 85 IBLA 270, 271 (1985); James M. Chudnow, 70 IBLA 71, 73 (1983). The regulation requires an offeror to identify surveyed lands by specifying each subdivision desired. Davis identified her selection of subdivisions by inserting the word "all" after each described section or group of sections. She asserts that use of the word "all" was intended to limit her offer to only those sections of land available for leasing, and, further, that BLM should have understood the use of the word "all" to mean that non-federal lands were to be excluded from her offer.

For purposes of rental computation, the Board has established that offers containing qualifying phrases such as "all" or "except" must be construed as applications for the entire section or subdivisions to which such phrases have been appended where the offer fails to specify land to be excluded. James M. Chudnow, 77 IBLA 77 (1983); James M. Chudnow, 67 IBLA 76, 77 (1982). In the decision cited by appellant, Milan S. Papulak, supra at 80, the Board reviewed the qualifying words "all" and "all available" and held such descriptions constitute an offer for all of the lands "within a given section." Therefore, absent identification of specific lands to be

excluded, appellant's offer must be construed to encompass all the land in sections 2, 3, and 7 through 18.

Appellant also contends she identified sections 12 and 13 of the township as unavailable for leasing by referring to a map prepared by the agency administering surface use. Under 43 CFR 3101.2-3 (1980), a map is not required for lands described according to a rectangular survey system, but is a necessary addition to an offer where the rectangular survey system is unavailable for use or the supervising agency has assigned an acquisition tract number. See also 43 CFR 3111.2-2. Although Davis refers to a description formulated by the Corps of Engineers, she does not mention an applicable tract number or metes and bounds description which would indicate something other than description by aliquot parts of the rectangular survey system is appropriate here. However, the map she refers to is not included in the record; therefore, presumably it was not sent to BLM as part of the lease offer. See Wilson v. Hodel, 758 F.2d 1369, 1372 (10th Cir. 1985); Glenn W. Gallagher, 66 IBLA 49, 51 (1982). The Board's position on the necessity to refer to materials outside the offer form to determine the description, even BLM status plats, was thoroughly explained in James M. Chudnow, 70 IBLA at 74 (1983):

> BLM receives a large volume of oil and gas lease applications and does not have the time or money to spend determining the precise proper description of the lands desired. * * * The burden of submitting an offer which accurately describes the lands sought is placed by the regulations appropriately on those seeking to benefit from Federal lands. Milan S. Papulak, [63 IBLA 16 (1982)]; Sam P. Jones, 45 IBLA 208 (1980). This Board has held that where BLM would have to go outside the offer form itself to determine exactly what land the offer embraced, the offer should be rejected as insufficient. See Leon Jeffcoat, 66 IBLA 80 (1982).

Regardless whether the map was intended to be incorporated into the offer, the stated description, not an accompanying map, is the principal source used to "delimit," that is, to describe the lands sought. See Thomas Connell, 70 IBLA 289 (1983). Based on the description found in Davis' offer form, her explanation that her offer is for only 12 sections cannot be accepted.

[2] The first year rental requirement for appellant's oil and gas lease offer is established by 43 CFR 3103.3-1 (1980), which provides:

> Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease. [1/]

1/ Revision of this requirement was set forth at 43 CFR 3103.2-1(a), effective Aug. 22, 1983, without change which would have any substantive effect on the disposition of this appeal.

Appellant contends the "total acreage" for which she must submit full payment is the amount of land described which is actually available for leasing. Departmental policy has consistently required that a rental payment submitted with an offer correspond to the acreage of the lands described in the offer; the fact part of the lands are unavailable for leasing or the offer contains a typographical error is irrelevant. D. M. Yates, 74 IBLA 18 (1983); James M. Chudnow, 67 IBLA at 78. 2/ BLM processes large volumes of oil and gas lease offers and relies upon the accuracy of the stated descriptions to screen offers where requirements for validity, such as sufficient rental payment, have not been satisfied. See Mountain Fuel Supply Co., 13 IBLA 85, 87 (1973). It is a well-established rule of the Department that noncompetitive oil and gas lease offers have not satisfied regulatory requirements and will be rejected where the offeror fails to tender sufficient rental to cover all the lands described within the offer and the tendered amount is deficient by more than 10 percent of the proper amount due. See, e.g., James M. Chudnow, 79 IBLA 1 (1984); Joe Johnson, 78 IBLA 382 (1984).

According to the official survey plat, the acreage actually embraced by Davis' description is 8,940.24 acres. The deficiency between the rental paid and rental due for the acreage described is $ 1,261, or around 14 percent. Since appellant's remittance was deficient by more than 10 percent, it was appropriate for BLM to reject appellant's lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ The Board also held in Milan S. Papulak, 30 IBLA at 80, that acceptance of a qualified description in an offer which does not provide specified exclusions, such as unavailable lands, is conditioned upon tender of advance rental for all of the lands described. See also James M. Chudnow, 77 IBLA at 78; James M. Chudnow, 67 IBLA at 77.